

**June 14, 2012**

**COMMENTS ON THE 2012 PROCUREMENT  
PROCESS PURSUANT TO SECTION 16-111.5(o)  
OF THE PUBLIC UTILITIES ACT**



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## **I. Introduction**

NERA Economic Consulting (“NERA”) appreciates the opportunity to submit these comments in response to the Public Notice of Informal Hearing published by the Illinois Commerce Commission (the “Commission”) with respect to the Spring 2012 electric procurement events held by the Illinois Power Agency (“IPA”) on behalf of Commonwealth Edison Company (“ComEd”) and Ameren Illinois Company (“Ameren”).

NERA served as the Procurement Administrator for the IPA’s RFPs of Standard Products and Renewable Energy Credits (“RECs”) for the ComEd portfolio and as such offers comments only with respect to the IPA’s RFPs for the ComEd portfolio. NERA’s comments will be limited as NERA believes that these procurement events were conducted as specified in the Act and the Commission approved the results. Our comments provide several suggestions that could result in enhancements to the implementation of future procurement events.

## II. Potential Enhancements

There has been a significant reduction in procurement volumes recently while the work needed to effectively run a procurement event has largely remained the same. In order to recover the costs of the procurement events, the IPA has had no choice but to significantly increase the fees charged to suppliers per block of energy or per REC. NERA notes that there are a number of potential enhancements that, if implemented and if consistent with the Act, would allow for more efficient administration of the IPA's ComEd procurement events and for a reduction in procurement costs. A reduction in procurement costs reduces the financial burden placed on suppliers and ultimately placed on customers.

We offer three suggestions with the goal of increasing efficiency and reducing costs of the procurement events. All suggestions would apply to future standard products RFPs and to future REC RFPs. These are as follows:

### **Rationalize Contract Comment Process**

We believe that consideration could be given to reduce the frequency of the contract comment process if allowed under Public Act 95-0481. Rationalizing the comment process would be beneficial for the following reasons:

- There have been six rounds of comments and enhancements on essentially the same contract terms, which have not resulted in substantive changes to the form of the documents.
- As time progresses, the number of potential suppliers that submit comments is diminishing and few new comments are submitted for consideration. With a variety of suppliers having submitted comments over the past several procurement events, it becomes less likely that a future comment process would identify a potentially significant barrier to bidder interest that could be accommodated without compromising the basic allocation risk in the contract or would identify a substantive change proposed by one bidder that would likely not be cause for concern by other bidders.
- The comment process is time consuming for suppliers, the Procurement Administrator, the Procurement Monitor, the IPA, and Commission Staff. Rationalizing the comment process would result in cost savings.
- The procurement events attract a robust number of participants, only a small proportion of which participate in the comment process. It is our sense that streamlining the comment process would not negatively affect participation at this stage.

We recognize that there are some benefits to the contract comment process and we certainly would not propose to dispense with the process for the procurement of a new

product (such as the Long-Term Renewable contracts or contracts for Distributed Generation). However, we believe that, for procurement events that have already been held several times, these benefits are outweighed by the significant costs of the process, which are ultimately borne by Illinois customers.

Several mechanisms could be envisaged to rationalize the comment process.

The IPA could request that the Commission approve the documents used in the immediately prior procurement events without change upon a finding that there have been no substantive changes in the market that would require modifications to the contract terms or consultation with potential bidders. If changes to the contract are required for technical or market change reasons, comments could be solicited on these changes only rather than on the entirety of the contract.

Alternatively, the IPA could request that the Commission approve the contract forms for a period of three years (unless superseded to reflect market or product changes), which would be aligned with the horizon for the procurement of standard products for the ComEd portfolio. Currently, all suppliers participating in an RFP sign a new contract each procurement year as the form of the contract changes (slightly) pursuant to the comment process held each procurement year. Suppliers approved by the Commission also sign a transaction confirmation while the contracts are returned to unsuccessful suppliers. However, in principle, a single Master Agreement could be used for products across procurement years, with the products of a given procurement year memorialized in a separate transaction confirmation. This would not require a fundamental change to the current contract form as the current contract form is, for all intents and purposes, a Master Agreement that could accommodate multiple transaction confirmations. Thus, if the contract forms were to be approved for a period of three years, a supplier approved by the Commission in the first of the three-year period would be able in the next year to execute simply an additional transaction confirmation rather than a brand new contract. Furthermore, the contract for an unsuccessful supplier could be kept on file by the Procurement Administrator for use in a future procurement event. This would reduce time associated with execution of the contracts, would reduce the costs of the procurement event, as well as reduce administrative burden for the suppliers and for ComEd. This would also make the contract a “Master” Agreement in function as well as in name. In industry practice a Master Agreement is used to enable parties to execute transactions over time without the burden of revisiting the basic terms and conditions. While the contract for the IPA’s procurement event is structured as a Master Agreement, it does not function that way because it is only used for a single procurement event. The suggestion for the contract form to be approved for three years would enable the contract to function as a Master Agreement consistent with industry practice.

### **Shift Responsibility for Preparation of Contracts to ComEd**

Currently, suppliers submit as part of their proposals signed Master Agreements that formalize their agreement with the terms. This is a commitment that we believe is important to the process and that ensures that suppliers understand the terms of the transaction before preparing their bids.

Mechanically, the Procurement Administrator has in past procurement events prepared the contracts on behalf of ComEd. The Procurement Administrator:

- collects from each supplier all information necessary to prepare the contract (and the guaranty if the supplier relies on the financial standing of a guarantor);
- prepares for each supplier an individualized draft contract with the supplier's and ComEd's specific information (and a guaranty if applicable);
- submits draft contracts and guaranties for ComEd review;
- collects any additional information identified as missing or incorrect by ComEd's review;
- distributes the final contracts to suppliers for signatures; and
- re-issues the contract to particular suppliers if information is updated from the initial submission.

The process is conducted over a period of 7-10 business days and occupies at least one and often two individuals during that period. We believe likely that it would be more efficient for ComEd to prepare the contracts and guaranties, a task with which ComEd is familiar. Further, this would eliminate the step of the process associated with ComEd's review and the Procurement Administrator's subsequent revisions to the documents. We believe that this would result in noticeable cost savings.

### **Make the IPA the Beneficiary Under the Pre-Bid Letter of Credit**

Suppliers submit a letter of credit as financial security for their bids. This letter of credit would be drawn upon if, for example, bidders fail to follow through on their undertakings under their proposal. When the first procurement events were held, ComEd was the beneficiary under this "pre-bid" letter of credit. This situation subsisted after the IPA was formed in 2008 even though the IPA was holding the procurement events for the ComEd portfolio. However, at that point, the IPA did not yet have sufficient staff to review these letters of credit in addition to its other duties.

With a Chief Financial Officer and attorney now on permanent staff at the IPA, the situation has changed. We believe that having the IPA be the beneficiary of the “pre-bid” letter of credit is prudent and would increase efficiency for a number of reasons:

- The IPA could oversee the submission of financial security for its procurement events. In particular, the IPA could consider and propose that the “pre-bid” letter of credit be drawn upon if bidders fail to follow through on their undertakings under their proposal, including the undertaking that they promptly pay the supplier fees. This would eliminate the need for suppliers to execute and for the Procurement Administrator to process the Supplier Fee Binding Agreement.
- While we would expect to continue reviewing any requested modifications to the pre-bid letters of credit with the Procurement Monitor and Commission Staff, and while we would tighten coordination with the Procurement Administrator for the Ameren procurement events, ComEd would no longer need to be involved in the review of the pre-bid letters of credit. This would also increase efficiency and we believe reduce time spent and cost for this review.
- The role of the Procurement Administrator retained by the IPA in the processing of the pre-bid letters of credit would be clearer to bidders and their financial institutions if the IPA were the beneficiary. Currently, some financial institutions make comments and request modifications to the pre-bid letter of credit because it is unclear that the Procurement Administrator has the authority to accept modifications to the pre-bid letter of credit on behalf of ComEd. Thus, this change may increase the degree of comfort that some financial institutions have with the pre-bid letter of credit.

This suggestion is with respect to the pre-bid letter of credit only. The letter of credit during the contract period (the “post-bid” letter of credit) would continue to be an integral part of the contract and any proposed modification would be reviewed by ComEd.



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